

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
Request for Emergency Declaratory)
Ruling by California State 9-1-1)
Program Manager)

CC Docket 94-102

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY OF THE CALIFORNIA
STATE 9-1-1 PROGRAM MANAGER

The California State 9-1-1 Program respectfully submits its Reply to the comments of others on our request for an emergency declaratory ruling (DA 98-1504). We agree with NENA, APCO, the Ad Hoc Alliance and others that the absence of liability protection for wireless carriers should not stall the implementation of the Commission's Order.

Our request was necessitated, in part, by those in the industry who felt that, without liability protection, they were unwilling to be subjected to the terms of the Order. Hence we felt compelled to have the Commission speak specifically to the situation in California so that we could proceed in one direction or another.¹ We had found our statewide implementation plans for wireless E9-1-1 service hopelessly stalled in negotiations with wireless carriers who now know that immunity will not be gained through state legislative efforts this year. Meanwhile, wireless 9-1-1 calls in California continue to dramatically increase in number without the time-saving benefits that E9-1-1 service offers.

¹ Despite the wishful inferences of certain carriers, our request was not a complaint about Federal inaction and did not spring from "confusion" (BellSouth, 2-3); nor was it a "request for the Commission to resolve liability issues." (Ameritech, 2) Our problem was and is carrier inaction.

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Liability protection. We are not opposed to immunity for wireless carriers, as demonstrated by our recent support of state legislation having that purpose and other goals. Nor are we opposed to any other efforts that would limit their liability in the area of 9-1-1. However, we do not believe the Commission established these as conditions of the Order.² We believe we have clearly met the conditions specified in the Order and yet this has not been enough to convince wireless carriers to fully participate. We strongly believe that any increased risk associated with providing E9-1-1 service does not begin to justify the real life-and-death risks associated with inaction. We encourage the FCC to rule clearly and decisively on this issue so that we may move forward.

Insurance as an E9-1-1 cost. Should the Commission continue to rule that immunity is not a condition of Phase I service, we strongly disagree with those commenters who argue that the full cost of liability insurance should be deemed recoverable. We believe this to be impracticable and inequitable. If insurance costs are considered fully recoverable, who will decide the policy scope, limits, and deductibles? What incentives will wireless carriers have to control costs and liability? How is coverage to be parsed and priced as among: (1) service other than 9-1-1; (2) 9-1-1 service that is not enhanced; and (3) E9-1-1 service? These and other questions will only serve to bring implementation plans to an abrupt halt across the country, wherever statutory immunity is still an issue.

It is worth noting that cellular carriers in our state have been providing basic 9-1-1 services since 1985 with only the protection granted by tariffs in place with the California Public Utilities Commission ("CPUC"). PCS carriers also have

² The effort by Omnipoint (3) and others to equate support for limitation of liability with endorsement of insurance protection as a recoverable cost is utterly spurious. If the Commission had intended this, it could have answered long ago carriers' calls for indemnification. To the contrary, the FCC's refusals to nationalize liability protection or to specify recoverable costs have been separate, distinct and emphatic.

been providing basic 9-1-1 service with no such protections. Whether there is substantial increased risk in providing E9-1-1 over basic 9-1-1 service has not been fully explored nor answered. We do not view the features associated with the E9-1-1 service, as necessarily increasing the risk to wireless carriers. In many ways we view the liability risk as substantially decreased.

Hence, to assert the full cost of insurance premiums should be recoverable under the Order is inequitable, since there is undeniably some risk that already exists today. We submit that if any of the cost is deemed recoverable, it should be only that part which is associated with the increase in risk over what wireless carriers already incur today. We would encourage the Commission to adopt a simple equitable approach to this issue, so that implementation efforts are not unduly stalled.³

Selective routing. We agree with the California Highway Patrol ("CHP"), XYPOINT, and others who submit that the appropriate state or local agency with jurisdiction over PSAPs should be the entity responsible for designating the "appropriate" PSAP. To the extent that the Order can be read to preempt state law obstructing federal purposes, we would support that effort to remedy a serious crisis that exists with wireless 9-1-1 calls in our state.⁴

This request for clarification was born of our efforts here in California to implement selective routing of calls to PSAPs, both on a trial basis and otherwise,

³ Our preference, of course, is not to deal with what promises to be an actuarial nightmare at all. We applaud those industry commenters -- Bell Atlantic Mobile, CTIA and TruePosition among them -- who would appear to be satisfied with the liability limitation that could be afforded by Federal informational tariffs, a proposal now pending at the FCC.

⁴ This should not be read as endorsement of sweeping, permanent, federally-imposed policies whose locus ultimately should be the state or local jurisdictions. The routing of basic 9-1-1 calls to the CHP has been a valuable solution in the absence of selective routing capability. To the extent that future California legislation overcomes the present obstacle to selective routing in the current law, any temporary federal preemption could be rescinded, either expressly or by legal implication.

as desired by the state and local authorities. All governmental authorities (State 9-1-1 Program, CHP, and local PSAPs) agree to support selective routing of the respective calls to non-CHP PSAPs, when it appears that is the best way to serve the caller.

However, as noted by several commenters, California state law requires that cellular 9-1-1 calls be routed to the nearest appropriate CHP office. Our efforts to change this law in our state have been stymied this year by the cellular industry's opposition to sponsored legislation once immunity provisions were removed from the bill. We plan to sponsor our own legislation next session. However, it appears that this would not be enacted for some time.

We are currently testing Phase I E9-1-1 service in Los Angeles County. For the L.A. trial, we attempted to get wireless carriers to route their calls to the appropriate PSAP (CHP or otherwise). CHP signed a Memorandum of Understanding ("MOU") with all participating PSAPs, which delegated the CHP's authority to answer cellular calls to others, as agreed. After many months of setbacks associated with wireless carriers' liability concerns, all wireless carriers have finally been cut over to the new enhanced service. However, this was achieved only after we agreed to permit cellular carriers to continue to route their calls to the CHP, and to a fixed-term trial for all wireless carriers. PCS providers agreed to selectively route calls as desired by the state.⁵

We will continue to work closely with the CHP and others to resolve this issue within our state but would appreciate any support the Commission could offer which allows selective routing to local PSAPs to happen expeditiously.

⁵ Without assigning motives to this disparate behavior of cellular and PCS carriers, it seems fair to point out that the CHP routing obligation applies only to cellular carriers by name.

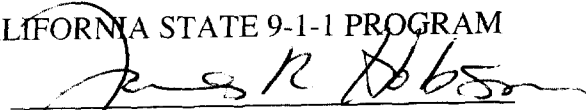
CONCLUSION

The State 9-1-1 Program believes that the implementation of the FCC Order as it pertains to wireless enhanced 9-1-1 will play a major part in solving some of the problems that currently exist in our state. However, due to carrier liability concerns, it is unlikely that these issues will be addressed near-term without clear and strong action from the Commission. We encourage the Commission to rule clearly and decisively regarding these matters so that wireless carriers and others involved in this implementation effort can have no doubt as to what their obligations are.

Respectfully submitted,

CALIFORNIA STATE 9-1-1 PROGRAM

By



James R. Hobson
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, N.W., #750
Washington, D.C. 20005-3934
(202) 371-9500

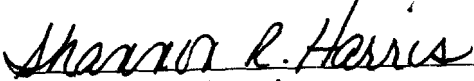
Leah Senitte, Manager
9-1-1 Program
Telecommunications Division
Department of General Services
State of California
601 Sequoia Pacific Boulevard
Sacramento, California 95814

August 24, 1998

ITS ATTORNEY

CERTIFICATE OF SERVICE

I hereby certify that I have on this 24th day of August, 1998, served copies of the foregoing *Reply of the California State 9-1-1 Program Manager*, by first-class mail, postage prepaid, on all parties of record in the above captioned proceeding.


Shannon R. Harris

Mr. Reuven M. Carlyle
V.P. - External Affairs
XYPOINT Corp.
2825 Eastlake Avenue East, Suite 250
Seattle, WA 98102

Mr. Mark J. O'Connor
Piper & Marbury, L.L.P.
1200 -- 19th Street, N.W.
Suite 700
Washington, D.C. 20036

Mr. Michael B. Day
Goodin, MacBride & Squeri
505 Sansome Street
Suite 900
San Francisco, CA 94111

Mr. Robert M. Gurss
Wilkes, Artis
1666 K Street, N.W.
Suite 1100
Washington, D.C. 20006

Mr. Stephen E. Carlson
Executive Director
Cellular Carriers Ass'n. of California
1225 -- 8th Street, Suite 550
Sacramento, CA 95814

Mr. John Cimko, Policy & Rules Division
Federal Communications Commission
2025 M Street, N.W.
Room 7202
Washington, D.C. 20554

Ms. Leah A. Senitte -- 911 Program Manager
Emergency Telephone System Section
Dept. of General Services
State of California
601 Sequoia Pacific Boulevard
Sacramento, CA 95814

Mr. S. C. Wilkins, Chief
Information Management Division
California Highway Patrol
Post Office Box 942898
Sacramento, CA 94298-0001

Mr. Jay L. Birnbaum
Skadden, Arps
1440 New York Avenue, N.W.
Washington, D.C. 20005

Mr. John T. Scott, III
Crowell & Moring, L.L.P.
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Chairman William E. Kennard
Federal Communications Comm.
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

Mr. Jim Conran
Ad Hoc Alliance
c/o Issue Dynamics
901 --15th Street, N.W., Suite 230
Washington, D.C. 20005

Mr. Peter M. Connolly
Koteen & Naftalin
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

Mr. Richard J. Quist, Jr.
420 Rosewood Drive
4th Floor, Building 2
Pleasanton, CA 94588

Ms. Carol L. Tacker
17330 Preston Road
Suite 100-A
Dallas, TX 75252

Mr. Michael Altschul
Cellular Telecomm. Industry Ass'n.
1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036

Mr. Bruce Beard
13075 Manchester Road
Suite 100
St. Louis, MO 63131

Ms. Joyce H. Jones
AirTouch Communications, Inc.
One California Street
29th Floor
San Francisco, CA 94111

Ms. Mary McDermott
Personal Comm. Industry Ass'n.
500 Montgomery Street
Suite 700
Alexandria, VA 22314-1561

Ms. Pamela J. Riley
AirTouch Communications, Inc.
1818 N Street, N.W.
Washington, D.C. 20036

Mr. Howard J. Symons
Mintz, Levin & Cohn
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004

Mr. John F. Raposa
GTE Service Corp.
600 Hidden Ridge, HQE03J27
Post Office Box 152092
Irving, TX 75015-2092

Mr. Douglas I. Brandon
Vice President - External Affairs
AT&T Wireless Services, Inc.
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

Ms. Caressa D. Bennet
Bennet & Bennet, P.L.L.C.
1019 -- 19th Street, N.W.
Suite 500
Washington, D.C. 20036

Mr. Philip L. Verveer
Willkie, Farr & Gallagher
3 Lafayette Centre
1155 -- 21st Street, N.W. -- Suite 600
Washington, D.C. 20036

Susan J. Bahr, Esquire
Bloomston & Mordkofsky
2120 L Street, N.W.
Washington, D.C. 20037